

BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

HEARING IN THE MATTER OF
CALIFORNIA DEPARTMENT OF WATER
RESOURCES AND UNITED STATES
BUREAU OF RECLAMATION REQUEST
FOR A CHANGE IN POINT OF
DIVERSION FOR CALIFORNIA
WATERFIX

**MOTION TO FULLY DISCLOSE EX
PARTE COMMUNICATIONS OR
DISQUALIFY HEARING OFFICERS
AND HEARING TEAM**

SUBMITTED ON BEHALF OF PATRICK
PORGANS

Albeit, early on in this process, PATRICK PORGANS raised concerns regarding the narrow scope of the Hearing, and predicted that protestants would not receive a fair or impartial treatment in this Hearing.

Patrick Porgans and Associates ("P/A") notified the State Water Resources Control Board ("SWRCB") California WaterFix ("CWF") co-chairs and the Hearing Team that protestants would not receive a fair or impartial treatment in this Hearing.

Documents obtained via the California Public Records Act (PRA) reveal that extensive ex parte communications took place between the SWRCB CWF Hearing Team members and the California Department of Water Resources, one of the PETITIONERS. There remain a number of other documents that have yet to be provided by the SWRCB CWF Hearing Team and the Department of Water Resources ("DWR.") A request for those records was made by attorney Michael Brodsky, 23 December 2017, and they have not been received.

A more recent request by the law firm of Somach Simmons & Dunn, 2 February 2018, Re: California Public Records Act Request, dated January 23, 2018: California WaterFix for current WaterFix project documents from the Department of Water Resources. The law firm represents the County of Sacramento. DWR attorney Michelle Morrow made the following response to Somach Simmons & Dunn on the 23 January 2018:

Your letter states that you estimate the Department of Water Resources (Department) can make available documents responsive to the County's PRA request on or about March 24, 2018. The County hereby requests that the Department make documents available on a rolling basis, and make an initial disclosure of readily available documents by February 7, 2018. As an example of the type of documents the County assert are "reasonably available" and can and should be disclosed promptly, the County is informed and believes that Department staff and/or counsel met with representatives of the California Department of Fish and Wildlife on or about January 28, 2018, to discuss revisions of the WaterFix project, including phasing of construction of other operations and associated revisions in the WaterFix Fish and Game Code section 2081 permit and supplemental environmental review of project modifications.

In light of the absence of providing all of the ex parte communications, and complete and accurate information on the Petitioner's proposed project, it would impede and obstruct the due process rights of the Protestants, by the Petitioners' failure to disclose all of the requested documents.

P/A asserts that should the SWRCB CWF Hearing co-chairs and Hearing Team members proceed without full disclosure of the ex parte communications, and without requiring Petitioners to provide current WaterFix project information, it would not only be inconsistent with the Board's own policy statement, it would be in conflict with due process and constitute a violation of the law. If the Hearing Officers so proceed, Patrick Porgans and Associates moves to disqualify the Hearing Officers and Hearing Team.

Alternative: The SWRCB CWF co-chairs and the Hearing Team should delay the Hearing until which time ALL of the requested ex parte documents are provided and investigated in order to discern the level of which the hearing process has been compromised, and stay the Hearing to allow DWR to produce the information requested by Sacramento County et. al. As is required this request is being made five days in advance of the schedule 8 February 2018 commencement of Part 2 of the Hearing. We await a prompt reply. Thank you.

Dated: February 4, 2018

Sincerely,

X *Patrick Porgans*

Patrick Porgans

**STATEMENT OF SERVICE
CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation
(Petitioners)**

I hereby certify that I have this day submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

**MOTION TO FULLY DISCLOSE EX PARTE COMMUNICATIONS OR DISQUALIFY
HEARING TEAM AND HEARING OFFICERS**

to be served **by Electronic Mail** (email), in parts due to server limitations, upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated January 24, 2018, posted by the State Water Resources Control Board at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml

Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.

I certify that the foregoing is true and correct and that this document was executed on February 4, 2018.

For Petitioners Only:

I caused a true and correct **hard copy** of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818:

Method of

Service: N/A

Signature: *Patrick Porgans*

X *Patrick Porgans*

Name: Patrick Porgans

Title: Solutionist

Party/Affiliation: Planetary Solutionaries

Address: P.O. Box 60940, Sacramento, CA 95860